



**In re of ML aka MW (Baby) (Adoption Cause 8 of 2011)
[2022] KEHC 605 (KLR) (Family) (28 April 2022) (Judgment)**

Neutral citation: [2022] KEHC 605 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE 8 OF 2011
LA ACHODE, J
APRIL 28, 2022
IN THE MATTER OF THE CHILDREN'S ACT NO. 8 OF 2011
IN THE MATTER OF AN APPLICATION FOR THE
ADOPTION OF BABY ML A.K.A MW (MINOR)**

IN THE MATTER OF

MWN APPLICANT

JUDGMENT

1. The Applicant moved this court vide the Originating Summons dated 16th November, 2021 seeking the adoption of Baby ML AKA MLW, a male minor, as a sole female Applicant. The Applicant is a married woman whose marriage was solemnized at the Office of Registrar of Marriages on the 14th August, 2014. The husband to the Applicant AGMW works and resides in the United States of America and has consented to the adoption vide a letter of consent dated 27th January 2021, sworn before a Notary Public in the State of Washington. The Applicant has one biological child, Anastacia Njeri who is 9 years old. The records before court indicate that the Applicant, MWN, is a Kenyan, working as a farmer and professes the Christian faith.
2. The child was found abandoned within Ilaiser Sub-County, Ildamat location in the North East Sub County of Narok County on 6th July, 2020. The child was rescued by Ms. JN on 6th July, 2020, who reported the matter at Narok Police Station. The case was booked under OB No. xxxx. Thereafter the child was committed to New Life Home Trusts – Kilimani vide a court order dated 15th July, 2020 by Narok Children's Court in Protection and Care Case No. 58 of 2020.
3. The Kenya Children's Homes Adoption Society's case committee declared the minor free for adoption vide the certificate of Serial Number xxxx dated 28th July, 2021. Consequently, Kenya Children's



Homes Adoption Society's placed the minor under the temporary care and custody of the Applicant vide the Care and Placement Agreement dated 5th August, 2021.

4. An officer from the Directorate of Children's Services conducted home visits and prepared and filed a report on 27th January, 2022. The officer noted that the Applicant lives with the child in a two-bedroom house in Kibichiku, Kiambu County. The report indicates that the environment is conducive for the minor's growth and development.
5. The officer noted that the Applicant has developed a strong bond with the child, and that they related well as mother and son. The child was healthy, happy, and well-groomed. The Officer recommended the adoption stating that it would be in the minor's best interest to be adopted by the Applicant.
6. The court appointed Pamela Shiyoya Kagonya to act as the Guardian ad litem in the proceedings vide the order dated 14th December, 2021. She filed a report dated 17th February, 2022 recommending the adoption of the minor by the Applicant. She noted that the child related well with the Applicant and that he appeared happy, healthy, friendly and quite at home. The child was present in the virtual hearings of this proceedings and appeared happy and interacted well with the Applicant.
7. Section 158 (1) of the *Children's Act* No. 8 of 2001 provides that an application for adoption by a sole Applicant shall be lawful where the applicant:

“Has attained the age of 25 years and is at least 21 years older than the child but has not attained the age of 65 years old; or

The Applicant is 29 years old, and is therefore above the age of 21 years, but below 65 years of age. The requirement set out under section 158(1) of the Children's Act is disjunctive hence the Applicant is within the age bracket stipulated by the law for the adoption to be allowed.

8. Section 158(2) of the children's act states; That an adoption order shall not be made in favour of a sole female applicant in respect of a male child unless the court is satisfied that there exist special circumstances to justify the making of an adoption order. As stated by the Director of Children's Services the special circumstances established in this matter is that the Applicant has her own biological child Anastacia Njeri and therefore can be allowed to adopt the child. This court finds that there does exist special circumstances to warrant the adoption since the child in question was abandoned and has no known relatives and it would be in the best interest that the child is placed with the applicant for him to receive motherly care, love and support.
9. The court observes that the Applicant has no criminal record as evinced by the Police Clearance Certificate No. xxxxx issued by the Directorate of Criminal Investigation (DCI) on 12th February, 2021. Wangige Sub County Hospital prepared a Medical Report dated 2nd February 2021 which indicates that the Applicant is of sound mind and good health as required by section 158(3) of the *Children's Act*.
10. By virtue of Section 76 of the *Children's Act*, the court is cognisant of the recommendation of the Act which states that it would be more beneficial to make an order than not to, in relation to the adoption of the child by a sole female applicant.
11. The National Adoption Committees guidelines in respect to special circumstances that may be considered for sole female Applicants adopting a male child provide that if the Applicant has adopted or has another biological child or children over whom she is willingly exercising parental responsibility she would be eligible to adopt a male child.



12. Article 53 of *the Constitution* of Kenya 2010, provides overarching principles which must apply whenever any decision concerning a child is to be considered. *The Constitution* of Kenya 2010 categorically provides that:

“A child’s best interests are of paramount importance in every matter concerning the child.”

This principle finds a firm place in the law in section 4(2) and 4(3) of the *Children’s Act* No. 8 of 2001 and is echoed by Article 4 of the *African Charter on the Rights and Welfare of the Child* which provides that:

“In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.”

13. Ms. JNI, the cousin of the Applicant, consented vide Affidavit dated 16th November, 2021 to be appointed the legal guardian for the minor in the event of incapacitation or death of the Applicant.

14. From the foregoing, the court is of the considered view that it is in the child’s best interest to be adopted by the Applicant. Accordingly, I allow the prayers sought in the Originating Summons dated 16th November, 2021 and order as follows:

- i. The Applicant, MWN, be and is hereby authorized to adopt ML (the minor), who shall henceforth be known as MLW after the adoption.
- ii. The child’s date of birth is hereby presumed to be 6th July, 2020.
- iii. The child is presumed to have been born in Kenya and his place of birth shall be Narok in accordance with Article 14(4) of the Constitution of Kenya 2010.
- iv. The Registrar General be and is hereby ordered to enter his name in the Adopted Children’s Register.
- v. The Director of Immigration be and is hereby authorized to issue the child with a Kenyan Passport.
- vi. JNI be and is hereby appointed as the legal guardian of the child, in the event of incapacitation or death of the Applicant.
- vii. The Guardian ad litem is hereby discharged.

SIGNED, DATED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF APRIL, 2022

.....

L.A ACHODE

HIGH COURT JUDGE

In the presence of..... Advocate for the Applicant

